JD(SF)-34-07
Riverside, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

St. Mary Medical Center
Employer
and

United Steel Workers
Petitioner Case No. 31-RC-8649

and

Service Employees International Union,
United Healthcare Workers-West
Intervenor

St. Mary Medical Center
Employer
and

United Steel Workers
Petitioner Case No. 31-RC-8650

and

Service Employees International Union,
United Healthcare Workers-West
Intervenor

Michael Weiner and Omar Shehabi, Attys.,
Gilbert & Sackman, Los Angeles, California, for the Petitioner.
Jannah V. Manansala, Atty.,
Roger & Rosenfeld, Alameda, California, for the Intervenor.
Raymond J. Carey and Chris Ward, Attys.,
Foley & Lardner LLP, Detroit, Michigan, for the Employer.

ADMINISTRATIVE LAW JUDGE'S REPORT ON CHALLENGED BALLOTS AND OBJECTIONS TO ELECTION

LANA PARKE, Administrative Law Judge. A hearing on challenged ballots and objections to election in the above cases was held on October 31 and November 1-2 and 6, 2007[1] in Riverside, California. Pursuant to representation petitions filed in Cases 31-RC-8649 and 31-RC-8650 by United Steel Workers (the Petitioner or the Union) on July 11 and intervenor petitions filed by Service Employees International Union, United Healthcare

[1] All dates refer to 2007 unless otherwise stated.

Workers-West (the Intervenor) on July 13, the parties entered into respective Stipulated Election Agreements.[2] Subsequently elections were conducted by the Region on August 16 and 17 among separate units of the non-professional and technical employees of St. Mary Medical Center (the Employer).[3]

I. Case 31-RC-8650: Technical Unit

A. Results of the Election in the Technical Unit

In the technical unit election, a total of 122 individuals cast ballots, of which 63 were cast in favor of the Petitioner, 3 were cast in favor of the Intervenor, and 56 were cast against the participating labor organizations. A majority of the valid votes were cast in favor of the Petitioner.

B. Objections to the Election

On August 24, the Employer filed timely objections to conduct affecting the results of the election in the technical unit.

1. Objection 1

> [The Petitioner and the Intervenor] by and through their respective representatives and agents, repeatedly and inappropriately entered and remained on Hospital property, thereby interfering with the free and uncoerced choice of eligible voters.

The Employer argues that the Petitioner trespassed on hospital property and thereby conveyed to employees the message that the employer is powerless to defend its property rights.[4]

During the election campaign, representatives of the Petitioner met regularly with employees at an outdoor smoking area on the hospital grounds where a few picnic tables were located (the smoking area). The smoking area was near various hospital office entrances, including the Employer's security offices and an entry that permitted easy access to the hospital cafeteria, which was available to the public. A description agreed to by one of the Petitioner's employee witnesses likened the smoking area to "a thoroughfare [that] people use…to cut through and go wherever they need to go in the Hospital, as part of their jobs." Although the Employer maintains that the area was not open to the public, no restrictions were posted, and members of the public, at least occasionally, gathered there.

---

[2] Where not otherwise noted, the findings herein are based on the formal documents, the stipulations of counsel, and/or unchallenged credible evidence.

[3] The stipulated classifications of the non-professional unit are set forth in Attachment 1 of the Report on Challenges and Objections, Order Directing Hearing and Notice of Hearing in Case 31-RC-8649. The stipulated classifications of the technical unit are set forth in Attachment 1 of the Report on Objections, Order Directing Hearing and Notice of Hearing in Case 31-RC-8650.

[4] No evidence was offered regarding the Intervenor.

On August 10, Randy Bevilacqua (Mr. Bevilacqua), vice president of communications and Tom O'Donnell (Mr. O'Donnell), the head of the Employer's security, approached Maria Somma (Ms. Somma), organizer for the Petitioner, and other of the Petitioner's organizers as they congregated in the smoking area of the hospital. Mr. Bevilacqua and Mr. O'Donnell directed the organizers to leave the area, which, after some discussion, they did.

On the following day, August 11, Ms. Somma and other union organizers again gathered at the smoking area. David Pringle (Mr. Pringle), vice president of administrative services, and Mr. O'Donnell went to the area and asked the organizers to leave, saying they were in a nonpublic part of the Employer's premises. Ms. Somma refused to leave, saying the Petitioner had a legal right to be there. A detective from the San Bernardino County Sheriff's Department whom Ms. Somma had contacted arrived and after discussion with employer and petitioner representatives declined to remove the organizers from the property. Mr. Pringle said that for the sake of patient well-being, the hospital would not press the request and asked the organizers to respect the purposes of the hospital. According to Ms. Somma, Mr. Pringle asked the organizers to sign in when they came to the hospital and to obtain visitor badges, to which Ms. Somma agreed.[5] During the following three days, hospital security personnel occasionally told the union organizers they were in a non-public area and the hospital would like them to leave. On each occasion, the organizers declined to comply, saying the issue had already been addressed and referring the security personnel to Mr. O'Donnell. Neither hospital management nor security took any action against the organizers.

On August 13, Ms. Somma and an accompanying organizer entered the hospital at an entrance near the cafeteria to obtain visitor badges. Enroute to the badge distribution point, Ms. Somma briefly greeted a hospital employee, Denise Avery (Ms. Avery), during which exchange both she and Ms. Avery observed and heard Brenda Dahlen (Ms. Dahlen), administrative assistant to the assistant vice president of nursing, report to someone via a portable communication device that union representatives were in the hospital talking to employees.[6] When Ms. Somma and the other union representative resumed course, Ms. Somma noticed that an individual she understood to be a supervisor/manager of the Employer[7] and Ms. Dahlen, appeared to be following them. When Ms. Somma asked the person if there was a problem, she said the union representatives were not supposed to be in that location but were supposed to be getting visitor badges. Ms. Somma said that was what she was doing. The person said she would make sure of it and followed them to the elevator, where Ms. Dahlen said she would ensure they got their badges and did not talk to anyone. Accompanied by Ms. Dahlen, the group went to the visitors' area, obtained badges, and, after a short colloquy with Ms. Dahlen about permissible restrictions on the Petitioner's presence in the

---

[5] Mr. Pringle testified that he never told Ms. Somma or any other representative of the Petitioner they needed to obtain visitor badges to be in the smoking or any other area of the hospital. I found Ms. Somma to be straightforward and detailed; I credit her testimony.

[6] Ms. Dahlen testified that before she utilized an inter-hospital land line to report the union organizers' presence in the hospital to Mr. Bevilacqua, she observed Ms. Somma and Ms. Avery "huddled" together talking. Her observation was clearly brief, and I credit Ms. Somma and Ms. Avery's descriptions of their encounter.

[7] Ms. Somma believed the supervisor/manager was Judy Austin (Ms. Austin), Director of Nursing. Contradictory testimony was offered as to whether any supervisor/manager was involved in this incident, and the Employer disputes that Ms. Austen was present. Although I accept Ms. Somma's testimony that a hospital employee joined Ms. Dahlen, I find it unnecessary to determine her identity or position.

hospital, returned to the smoking area.[8] The August 13 interchanges between Ms. Somma and hospital personnel took place in areas frequented by hospital employees, but there is no evidence that any employee but Ms. Avery noticed them.[9]

In *Cambridge Tool Mfg.,* 316 NLRB 716 (1995), the Board enunciated an objective standard to be applied to party conduct during an election's critical period. In determining whether the conduct has "the tendency to interfere with the employees' freedom of choice," the Board considers nine factors in applying the *Cambridge* test: (1) The number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party.

Even accepting the Employer's contention that the Petitioner's agents' made unauthorized forays onto the hospital's private property or into unit employees' work areas, there is no objective basis under the *Cambridge* test for concluding the Petitioner's conduct interfered with or coerced any employee. There is no evidence the Petitioner's representatives did other than solicit employee support for the Union during their visits to the smoking area, and, as demonstrated by Ms. Dahlen's notification to management upon seeing the Petitioner's representatives in the hospital hallway, employees apparently felt free to call for assistance to remove interlopers. Even assuming the Petitioner trespassed on hospital premises, the Employer cites no authority for the proposition that mere trespass or even work disruption constitutes objectionable conduct. An unpublished decision referred to by the Board in *Sunshine Convalescent Hospital, Inc.,* 187 NLRB 688 (1971), suggests that such conduct does not warrant setting aside an election.

Phillips Chrysler-Plymouth, 304 NLRB 16 (1991), cited by the Employer, is inapposite to this situation. In *Phillips*, two union organizers were present in the employer's shop area during the 45-minute period prior to the 9 a.m. preelection conference. The organizers refused the manager's request to leave the shop area and wait in the reception area until the pre-election conference, engaged in a "shouting match" in front of employees, and persisted in remaining in the shop area even after police arrived. The Petitioner's actions in refusing to leave the smoking area and in entering the hospital to obtain visitors' badges does not even approximate the conduct found objectionable in *Phillips.* Further, the conduct herein did not occur, as did that in *Phillips*, on the day of the election, and it is by no means clear that the Petitioner's representatives were trespassing by congregating at the smoking area where members of the

[8] Ms. Dahlen testified that neither Ms. Austen nor any other management person was present during her interaction with the union organizers and that she solicitously and cordially offered to show them where to get badges. I find Ms. Dahlen's version of events unreliable. She recalled having a pleasant conversation with the organizers, including a couple of laughs, as she accompanied them to get badges, but she also testified that a short time later, upon seeing her, Ms. Somma chided, "We can be here if we want. Just go ahead and call the Police. We have the right to be here." The unexplained incongruity of the two alleged exchanges prevents me from crediting Ms. Dahlen.

[9] Although Ms. Avery told other employees what had occurred, there is no evidence she did so in terms likely to alarm or intimidate them.

general public also occasionally gathered or by entering the hospital to obtain visitor badges.[10] Accordingly, I find no basis in the Petitioner's conduct in this regard for setting aside the election, and I recommend the Employer's objection 1 be overruled.

2. Objection 2

> [The Petitioner and the Intervenor] by and through their respective representatives and agents, made material misrepresentations of fact and/or law during the pre-election campaign. These include, but are not limited to, false and misleading statements concerning NLRB processes and/or false and misleading statements concerning union representatives' rights to be on Hospital property.

On August 31, the Employer submitted its offer of proof in support of its objections to election filed on August 24. With regard to Objection 2, the Employer offered to prove that the Petitioner disseminated flyers to employees mischaracterizing NLRB processes by misrepresenting the circumstances related to the Intervenor's attempted withdrawal from the election and by accusing the Employer of attempting to delay the election. The Employer also offered to prove the Petitioner misrepresented that its representatives had been given permission to enter hospital premises. In its post-hearing brief, the Employer alleges additional objectionable misrepresentations: (1) the Petitioner in a flyer falsely accused the Employer of stating that "all wages will be frozen and [employees] will not get any raises while in negotiations" and threatened legal action against the Employer and knowingly countenanced its supporters in disseminating like information to employees. (2) Ms. Licon falsely told numerous employees in the technical unit that the Employer had threatened to terminate her employment because she supported the Petitioner; Ms. Licon refused to retract her statements after the Employer had assured her that her employment was not in jeopardy.

The events upon which Employer Objection 2 is premised are fully set forth hereafter in the discussions of Petitioner Objections 3, 4, 6, 11, 13, and 14 and need not be detailed here, particularly in light of the Board's long-established stance on election campaign misrepresentations and rhetoric. The Board recognizes that employees are "mature individuals who are capable of recognizing campaign propaganda for what it is and discounting [its claims]." *Midland National Life Insurance Co.,* 263 NLRB 127 (1982); *Riveredge Hospital,* 264 NLRB 1094 (1982). Accordingly, the Board declines to set aside elections on the basis of a party's misleading statements or a party's misrepresentations of Board actions made during election campaigns. Here, during the election campaign both the Petitioner and the Employer issued considerable written propaganda, and a profusion of campaign rumors circulated among employees. The Board will not "probe into the truth or falsity of the parties' campaign statements" and "will not set elections aside on the basis of misleading campaign statements." *Midland* at 133; see also *U-Haul Co. of Nevada, Inc.,* 341 NLRB 195 (2004). There is no evidence that any propaganda improperly involved the Board and its processes. Mere misstatements of law or Board actions are not objectionable under *Midland.* See *Virginia*

[10] Cal. Penal Code section 602 (n) states: Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:
(n) Refusing or failing to leave land real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a police officer at the request of the owner [or] the owner's agent…

Concrete Corp., 338 NLRB 1182, 1186 (2003) and cases cited therein. There is no evidence that any employee rumor was of such a nature reasonably to have interfered with employees' exercise of free choice.[11] Accordingly, I recommend the Employer's Objection 2 be overruled.

3. Objection 3

> Actions of the local Region of the NLRB relating to [the Intervenor's] efforts to withdraw from the election resulted in voter confusion.

Two days before the election, the Intervenor requested that the Region withdraw its name from consideration in the election but did not submit a disclaimer of interest.[12] The Regional Director refused the Intervenor's request. By memorandum dated August 14, the Employer notified employees that the Intervenor had withdrawn from the election. On August 15, the Petitioner distributed a flyer to employees stating that the Intervenor had requested to withdraw from the election but that the Region had denied the request because it had been made too close to the election. The Petitioner further stated that while the Employer wanted to delay the election for a week, the Petitioner had refused; it wanted the election to be held as scheduled. The Intervenor distributed its own flyer asserting its continuing interest in representing the unit employees: "[the Intervenor] is still part of this election and still the **best choice**…say NO to the [Petitioner] say YES to [the Intervenor]."

There is no evidence the Intervenor deliberately manipulated the Board's election process by requesting to withdraw from the election ballot. There is also no evidence the Regional Director abused his discretion in refusing the Intervenor's request in circumstances where the Intervenor made its request very shortly before the election and did not submit a disclaimer of interest. See NLRB Casehandling Manual Part 2 Representation Proceedings Sec. 11098. Finally, each party addressed the situation in communications to employees, and while the communications evidenced some confusion, there is no evidence of employee confusion that would be expected to affect the results of the election. There being no evidence that the circumstances surrounding the Intervenor's attempt to withdraw from the election had a tendency to interfere with the employees' free election choice, I recommend the Employer's Objection 3 be overruled.[13]

RECOMMENDATION

Based on the above, I recommend that Petitioner's objections in Case 31-RC-8650, in their entirety, be overruled.

---

[11] In light of my conclusion as to this objection, it is unnecessary to consider whether the Employer gave the Petitioner the clear notice it needed to defend against the additional allegations. See *Factor Sales, Inc.*, 347 NLRB No. 66 FN 7 (2006).

[12] The Region informed the parties in an email from Board Agent, Steve Alduenda, dated August 15 that the Intervenor had not timely requested to withdraw from the election and had not submitted a disclaimer of interest. No party has disputed Mr. Alduenda's representation that the Intervenor did not disclaim interest, and I accept it as fact.

[13] The Employer asserts that the Board's failure to appear at the hearing to address its conduct is dispositive of the need to set aside the election in the technical unit. There is no basis for and I decline to draw any adverse inference from the failure of a Board agent to appear and to testify about these matters.

II. Case 31-RC-8649: Non-Professional Unit

A. Results of the Election in the Non-Professional Unit

In the non-professional unit election, a total of 358 individuals cast ballots, of which 165 were cast in favor of the Petitioner, 11 were cast in favor of the Intervenor, and 177 were cast against the participating labor organizations. Five challenged ballots, which are sufficient in number to affect the results of the election, remain unresolved. On August 24, the Petitioner filed timely objections to conduct affecting the results of the non-professional unit election.

B. The Challenged Ballots

The following challenges to ballots were made at the election in the non-professional unit:

Voter Name	Challenged by	Reason
Lucy Sinohui	Petitioner	Confidential employee
Maria Teresa Sanchez	Petitioner	Confidential employee and Supervisor
Tammie Boulanger	Petitioner	Supervisor
Abigail Mendoza	Board	Not on Eligibility List
Teresa Velazquez	Board	Not on Eligibility List

The Petitioner contends that, at all relevant times, Lucy Sinohui (Ms. Sinohui), Maria Teresa "Tessa" Sanchez (Ms. Sanchez), and Teresa Velazquez (Ms. Velazquez) have had access to personnel records and payroll information and should be excluded as confidential employees, which position the Employer disputes. The Petitioner has the burden of proof. *Crest Mark Packing Co*., 283 NLRB 999 (1987).

The Board has held that only those who "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations may be excluded from a collective-bargaining unit as confidential employees. *Lincoln Park Nursing Home*, 318 NLRB 1160, 1164 (1995); *Bakersfield Californian,* 316 NLRB 1211 (1995); *B.F. Goodrich Co.*, 115 NLRB 722 (1956). The Board uses the "labor nexus" test which was approved by the Supreme Court in *NLRB v. Hendricks County Rural Electric Membership Corp*., 545 U.S. 170 (1981). Access to medical or personnel records or attendance is insufficient to establish confidentiality. *Milwaukee Children's Hospital Assn*., 255 NLRB 1009, 1014 (1981); *Ladish Co*., 178 NLRB 90 (1969); *Hampton Roads Maritime Assn*., 178 NLRB 263 (1969); *RCA Communications*, 154 NLRB 34, 37 (1965).

At all relevant times, Ms. Sinohui has been an administrative assistant to Vivian Brooks (Ms. Brooks), respiratory manager for the Employer. The position of administrative assistant was included in the list of included classifications in the Stipulated Election Agreement. Ms. Sinohui enters and corrects time and attendance data into the appropriate computer program for the respiratory care practitioners whom Ms. Brooks supervises. Ms. Sinohui also files personnel information in department employees' files, which are kept in Ms. Brooks' office. Her only access to employee files is to place information therein, as directed by Ms. Brooks. Ms. Sinohui maintains files relating to competencies and time and attendance of traveling (temporary) employees, venders' contracts, and product information. She delivers personnel documents to human resources, excluding disciplinary action forms. All personnel documents handled by Ms. Sinohui are those of which employees are aware.

During the relevant period, Ms. Sanchez was employed as a dietary coordinator and served as a relief PM supervisor in the Employer's food service department. In those positions, Ms. Sanchez filed food service employees' evaluations and disciplinary documents. Although she took minutes at various departmental meetings, she did not attend meetings at which employee disciplinary matters were discussed.

While Ms. Sinohui and Ms. Sanchez' duties may have included filing and maintaining confidential information during the course of which they may have become aware of such information before it was formally presented to the employees involved, their mere exposure to the information does not make them confidential employees. The Board has long held that merely having access to confidential information does not establish confidential status. *Bakersfield Californian*, at 1212.

No explanation was offered as to why Ms. Velasquez' name was omitted from the eligibility list. At the time of the election, she had been employed by the Employer as an administrative assistant to Mr. Pringle. At the time of the election, in addition to being vice president of administrative services, Mr. Pringle had oversight responsibility for the Employer's Human Resources Department with no involvement in collective bargaining or employee grievances. Ms. Velasquez' duties included taking minutes of medical management, patient safety and care, and other hospital oversight meetings. While employee infractions or errors might be noted in such meetings, such were incidental to review of issues concerning compliance with healthcare standards and hospital policies. Ms. Velasquez was never present at meetings that dealt with employee performance. There is no evidence Ms. Velasquez assisted or acted in a confidential capacity to anyone who oversaw the Employer's labor relations policies. See *Lincoln Park Nursing Home* and *Bakersfield Californian,* supra.

Accordingly, I find that Ms. Sinohui, Ms. Sanchez, and Ms. Velasquez were not confidential employees at any relevant time, and I overrule the challenges to the ballots of Ms. Sinohui and Ms. Velasquez. Although I find that Ms. Sanchez was not a confidential employee, the question of whether the challenge to her ballot should be sustained depends on whether, as discussed hereafter, she was a supervisor within the meaning of the Act.

The Petitioner contends that, at all relevant times, Ms. Sanchez and Tammie Boulanger (Ms. Boulanger) possessed Section 2(11) indicia and should be excluded as supervisors, which contention the Employer disputes.[14] Neither Ms. Sanchez nor Ms. Boulanger had authority to hire, transfer, suspend, lay off, recall, promote, discharge, or discipline employees. During the relevant period, Ms. Sanchez served as a PM supervisor in the food services department.[15] In that position, she oversaw the work performed by food service employees, ensuring that staff was present and that the standards and policies of the department were maintained, e.g., that food was properly apportioned, covered, and served at the appropriate temperature, and that the tray preparation line moved efficiently. Although Ms. Sanchez reviewed policies and procedures with new employees, she had no responsibility in devising them. She reported any

[14] Section 2(11) of the Act defines a "supervisor" as any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

[15] At a department meeting of employees on November 2, Brenda Cavender (Ms. Cavender), dietary department supervisor, informed employees that Ms. Sanchez was in training as a supervisor.

information regarding procedural or employee problems in the supervisor communication log book or orally to a manager without making any recommendation for resolution or action. Ms. Sanchez delegated overtime and called in employees as schedule changes demanded, but she had no authority to require employees to work; if an employee refused an assignment, Ms. Sanchez applied to another employee or, in the case of overtime, worked it herself. Although Ms. Sanchez could point out failures to perform work according to established procedures, she had no authority to impose discipline.

During the relevant period, Ms. Boulanger worked as a quality analyst/educator in the Employer's Admitting Department. Ms. Boulanger assisted the admitting supervisor and performed new employee training and retraining, as directed by the admitting supervisor but had no responsibility for devising training policies or procedures. Ms. Boulanger gave the admitting supervisor her opinion of when trainees were ready to work independently. Other departments of the hospital notified Ms. Boulanger of inaccuracies in admitting data, which she corrected in patient accounts, noting each error on a form provided for that purpose and recording the errors on a spread sheet. Accumulated error forms were given monthly to employees responsible for the errors, and the error spread sheet was made available to both employees and supervisors. Ms. Boulanger had no involvement in employee evaluations or in determining whether an employee needed retraining.

Neither Ms. Sanchez nor Ms. Boulanger had authority to hire, transfer, suspend, lay off, recall, promote, discharge, or discipline employees. The Petitioner contends that each exercised independent judgment in assigning and responsibly directing the work of employees, as contemplated in Section 2(11) of the Act. Those terms were recently addressed by the Board in *Oakwood Healthcare, Inc.,* 348 NLRB No. 37 (2006); *Croft Metals, Inc.*, 348 NRLB No. 38 (2006); and *Golden Crest Healthcare Center,* 348 NLRB No. 39 (2006), under the framework of the Supreme Court's decision in *NLRB v. Kentucky River Community Care,* 532 U.S. 706 (2001). The Board adopted definitions for the terms "assign," responsibly to direct," and "independent judgment," as used by Section 2(11) of the Act in denoting supervisory authority. As to the term "assign," the Board construed it to mean designating an employee to perform significant overall duties. Directing an employee to perform discrete tasks within such an assignment, as in giving an ad hoc instruction, is not, in the Board's view, indicative of supervisory authority to "assign."[16] With regard to the term "responsibly to direct," the Board concluded that for an individual's action to be so described, the directing person "must be accountable for the performance of the task so as to fundamentally align the person with management.[17] Finally, the Board considered that "independent judgment" is exercised when an individual acts or recommends action free of the control of others, which action rises above the merely routine or clerical.[18] In *Oakwood Healthcare, Inc.,* the Board construed the authority "to assign" to involve the act of designating an employee to a specific place in which to perform his or her work, appointing an employee to a particular time during which to perform that work, or giving an employee significant overall duties or tasks to perform. The authority "responsibly to direct" involves deciding which job shall be undertaken and who shall do it, provided that the direction is both responsible and given with independent judgment. For the direction to be responsible, the person giving the direction must be accountable for the performance of the task under penalty of adverse consequences for improper execution. "Independent judgment" does

[16] *Oakwood Healthcare, Inc.,* supra, at slip op. 4-5.

[17] *Oakwood Healthcare, Inc.,* supra, at slip op. 8.

[18] *Oakwood Healthcare, Inc.,* supra, at slip op. 9-10. The concepts detailed in *Oakwood Healthcare, Inc.* are echoed in *Croft Metals, Inc.*, supra, and *Golden Crest Healthcare Center,* supra.

not exist if directions are dictated or controlled by detailed instructions that do not allow for discretionary choices.[19] Applying these definitions, there is no evidence that Ms. Sanchez or Ms. Boulanger exercised independent judgment in assigning or responsibly directing any employee. Neither was free from the control of their superiors in performing employee oversight but rather followed specific instructions and policies provided by the Employer that did not allow for discretionary choices and exercised nothing more than a reportorial function concerning potential disciplinary issues. See *Millard Refrigerated Services, Inc.,* 326 NLRB 14371438 (1998).

Accordingly, I find that Ms. Sanchez, and Ms. Boulanger were not supervisory employees within the meaning of the Act at any relevant time, and I recommend the challenges to their ballots be overruled.

The name of Abigail Mendoza (Ms. Mendoza) did not appear on the eligibility list. The Petitioner contends that at the time of the election Ms. Mendoza was a temporary employee who had been hired after the eligibility cut-off date. The Employer disputed the Petitioner's position but provided no evidence of Ms. Mendoza's employment. No evidence having been adduced regarding the eligibility of Ms. Mendoza, I recommend the challenge to her ballot be sustained.

In light of my recommended dispositions of the Petitioner's Objections to the Election in Case 31-RC-8649 set forth below, I do not recommend the opening and counting of the ballots of Lucy Sinohui, Maria Teresa Sanchez, Tammie Boulanger, and Teresa Velazquez.

C. The Petitioner's Objections to the Election

The Petitioner filed 15 numbered objections. At the hearing, the Petitioner stated its intention to pursue only the following numbered objections: 1, 3, 4, 5, 6, 8, 11, 12, 13, 14, and 15. In its post-hearing brief, the Petitioner tacitly withdrew Objection 14.[20] Accordingly, only Objections 1, 3, 4, 5, 6, 8, 11, 12, 13 and 15 are addressed herein.

The closeness of the election in the Non-Professional Unit requires careful scrutiny of these objections. As detailed above, *Cambridge Tool Mfg.,* supra, sets forth the objective standard to be applied in representation proceedings where there has been no unfair labor practice allegation or finding.[21] See also *Nyes Corp.,* 343 NLRB 791 FN 2 (2004); *Harsco Corporation,* 336 NLRB 157, 158 (2001). As appropriate, the following objections to election are considered under the *Cambridge* test.

---

[19] *Oakwood Healthcare, Inc.,* supra, at slip op. 4-10

[20] In its brief the Petitioner stated that upon further reflection, it concluded the Region had acted properly with regard to declining to remove the Intervenor's name from the ballot.

[21] With regard to a number of its objections, the Petitioner argues that the Employer's conduct violates Section 8(a)(1) of the Act, which is "a fortiori, conduct which interferes with the results of an election." *Dal-Tex Optical Co.,* 137 NLRB 1782, 1786-87 (1962). That standard is not appropriate to this proceeding where there has been no unfair labor practice allegation or finding, N*YES Corp.,* 343 NLRB 791, FN2 (2004), and I have not applied it.

1. Objection 1

> During the critical period …the [Intervenor] widely distributed a flyer to employees falsely accusing the [Petitioner] of lying about [the Intervenor's] status in the election. This action constitutes a misrepresentation of the NLRB's election process.

In its post-hearing brief, the Petitioner presented no argument in support of Objection 1. From the Petitioner's pre-hearing Evidentiary Statement in Support of Objections, it appears that the Petitioner's Objection 1 relates to a flyer distributed by the Intervenor on and after August 15, in which the Intervenor accused the Petitioner of spreading "false rumors" and stated "SEIU United Healthcare Workers-West is still part of this election[.]"

In the absence of any explicating rationale for this objection, I recommend the Petitioner's Objection 1 be overruled.

2. Objection 3

> During the critical period, just before the first day of the election, [the Intervenor] deliberately manipulated the NLRB's election process and caused confusion among employees by making an ineffective attempt to withdraw from the election at a time when [the Intervenor] knew it to be unlikely that such withdrawal would be approved by the NLRB.

The Petitioner's Objection 3 relates to the same fact situation and is based upon the same legal position as the Employer's Objection 3 in Case 31-RC-8650. The Petitioner has presented no facts or argument that would alter the analysis set forth above. Accordingly, I recommend the Petitioner's Objection 3 be overruled.

3. Objection 4

> During the critical period, from the beginning of August 2007 until the time of the election, the Employer held daily or near-daily meetings with employees at which the Employer stated that, should the Union win the election, the Employer would discontinue all regularly-scheduled wage increases throughout the duration of contract negotiations. The Employer also stated that negotiations for a collective bargaining agreement could take up to three years and that there would be no wage increases during this time period. The Employer also stated that any wage increases employees would receive as a result of a collective bargaining agreement would not amount to any more than the employees would lose during negotiations. The meetings at which these statements were made took place on both a departmental and a hospital-wide basis, and often took place immediately following and in the same location as mandatory staff meetings. The timing, presentation, and substance of these statements amounted to improper threats to withhold benefits and threats to make unilateral changes to terms and conditions of employment in violation of Sections 8(a)(5) and 8(a)(1) of the Act.

For many years, the Employer has followed a policy and practice of giving annual increases to employees based on their performance evaluations (merit increases). The percentage of the increases changes from year to year, at the Respondent's discretion, depending upon the Respondent's evaluation of its economic situation and wage comparisons with similar institutions.

At the end of July, Esther Edwards (Ms. Edwards), attended a meeting conducted by Bob Diehl (Mr. Diehl), vice president of planning, with two other respiratory therapists. According to Ms. Edwards, Mr. Diehl said negotiations could last for months or as long as three years during which period employee wages would be "held." Mr. Diehl drew a bar graph to demonstrate that a wage increase obtained after three years of negotiations would not make up for withheld annual wage increases of five percent. Mr. Diehl testified that during the meeting, he responded to employee interest in negotiations in which Certified Nurse Assistants (CNAs) had received 13% wage increases by saying, "after the contract [sic], it took quite some time until something was agreed to. And then finally it went in and it was 13 percent and it had to last for some time until the next time around. So in the end, that may or may not compare favorably with the type of increases that an employee might see in a normal year to year pay increase situation." Mr. Diehl admitted drawing a graph contrasting a 13 percent increase at the end of a three-year period with three years of normal year-to-year increases the Employer had "historically" given.[22]

In August prior to the election, Mr. Bevilacqua, vice president of communications, conducted several voluntary meetings with employees at which prospective unionization was discussed. On August 9 and 14 respectively, Ms. Edwards attended assemblages of respiratory therapists during which Mr. Bevilacqua spoke about unionization. According to Ms. Edwards, in the August 9 meeting Mr. Bevilacqua told about ten or eleven employees that employee raises would be held during negotiations, whether negotiations lasted a couple of months to three years. He said employees would be given their annual evaluations but would not receive the normally attendant wage increases until the contract was concluded. Ms. Edwards told Mr. Bevilacqua that the Petitioner had said the Employer had to maintain the status quo and could not hold employees' raises. Mr. Bevilacqua disagreed, saying, "No, they would hold [the wage increases]."

In the August 14 meeting, according to Ms. Edwards, Mr. Bevilacqua again told about six to eight employees that raises would be held. When Ms. Edwards told him the Union had said the hospital could not do that, Mr. Bevilacqua said he differed with that opinion. Employee Denise Avery (Ms. Avery) also attended this meeting. According to Ms. Avery, an employee asked if she would receive her anticipated merit wage increase if the Union was selected. Mr. Bevilacqua said everything was put on hold until the company determined what was going to happen with the Union and that it could be months to a couple of years until negotiations were cleared with the Union. When the employee further inquired, "So you are saying that there will be no pay raises during negotiation," Mr. Bevilacqua answered that everything was on hold until the Employer determined what was going to happen with the Union. Following the meeting, Ms. Avery informed ten or twelve other employees of what Mr. Bevilacqua had said, while Ms. Edwards told about 30 people, most of whom were non-professional unit employees, what both Mr. Diehl and Mr. Bevilacqua had said.

[22] Mr. Diehl denied saying that negotiations might last as long as three years, but he admitted telling the employees that in the case of the CNAs three years elapsed after union certification before a contract was achieved. Mr. Diehl's testimony was vague as to what, specifically, he told employees. I found Ms. Edwards to be a candid and direct witness, and I credit her testimony.

Mr. Bevilacqua testified that at some of the employee meetings he conducted, employees asked what happened to current practices in the event a union was elected, to which he replied, "Nothing happens until a contract is signed."[23]

The law is clear that during an election period or during negotiations an employer has a duty to "implement benefits which have become conditions of employment by virtue of prior commitment or practice." *More Truck Lines,* 336 NLRB 772 (2001) [citations omitted]. Here, the Employer historically evaluated employees' performances annually and granted wage increases based on the evaluation scores (merit increases). Although the amounts of the merit increases were discretionary, they nonetheless constituted customary periodic increases, the bestowal of which employees reasonably relied upon. *Mission Foods,* 350 NLRB No. 36, FN 4 (2007); *United Rentals, Inc.,* 349 NLRB No. 83, slip op. 2 (2007); *Jensen Enterprises, Inc.,* 339 NLRB 877 (2003). The rational inference to be drawn from Mr. Bevilacqua and Mr. Diehl's pre-election statements about wage increases is that the Employer informed employees their regular annual merit increases would be withheld for the period of any ensuing negotiations if they chose to be represented by a union. Applying the *Cambridge* test, it is clear that many of the criteria for finding objectionable conduct have been met: the Employer expressed its intent to withhold merit increases during any negotiations to numerous employees in several employee meetings, which forewarning was widely disseminated among employees; the Employer's statements were likely to cause fear of lost income among employees in the bargaining unit and to persist in their minds through the election, which occurred shortly thereafter. Given the closeness of the vote, the statements were almost certain to affect the results of the election. See *Mid-South Drywall Co., Inc.,* 339 NLRB 480, FN 7 (2003). Accordingly, I recommend the Petitioner's Objection 4 be sustained.

4. Objection 5

> On August 16, 2007, the first day of the election, a mandatory meeting was held for certified nursing assistants in the telemetry department at 7:15 a.m. Employees were not informed about the meeting until the evening before it. The Employer stated that it was a "mandatory emergency" meeting…The meeting did not end until 8 a.m., after polls had closed in the first session of voting. As a result of this meeting, two employees who had intended to vote in the first session and who were unable to vote at any other time did not get to vote in the election.

The Board scheduled the election herein for three sessions—6:00 A.M. to 8:30 A.M., 11 A.M. to 2:00 P.M., and 4:30 P.M. to 8:00 P.M.—on each of two days: Thursday, August 16 and Friday, August 17. Earlier in the election week, the Employer had scheduled a mandatory meeting for the telemetry department on the morning of August 15 but, on that day, rescheduled the meeting for 7:30 A.M. on the following day, August 16. The meeting did not begin until 8:00 A.M. and lasted until about 8:30 A.M., preventing attending employees from voting during that period of the first election session.

[23] The Employer argues that Mr. Bevilacqua lawfully asserted the legal requirement that an employer must maintain the status quo during negotiations. Mr. Bevilacqua's testimony regarding the employee meetings consisted primarily of denials that he had made objectionable statements and was abbreviated as to the specifics of what he had said. I found Ms. Edwards and Ms. Avery's testimony to be forthright and clear, and I credit their accounts.

Following the meeting, three CNAs walked to the polling area to vote and found the polls closed. One of the three told another employee that she would not be able to come back because she had children at home. No evidence was presented that any of the three employees did not vote in the election.

Although it appears the timing of the telemetry department meeting may have inconvenienced three employees by preventing them from voting during the latter part of the August 16 morning election session, five more voting sessions remained. There is no evidence the Employer scheduled the meeting to interfere with employee voting opportunity, and there is no evidence that any employee was thereby prevented from voting. Accordingly, I shall overrule Objection 5.[24]

5. Objection 6

> [Maria "Tessa" Sanchez, alleged supervisor, told a dietary department employee that more work hours would soon become available] because Brandi Licon was going to be terminated because she was a union activist. Licon was known by the employee and other employees in the dietary department to be a strong and vocal supporter of the [Petitioner]. The employee told Licon about Sanchez' threat. Licon, in turn, told many other employees.

Sometime before the election, Martha Ramos (Ms. Ramos), dietary aide/technician, asked Ms. Sanchez if she could put in a good word for her with department supervisors Ms. Cavender and Michelle Goodrow (Ms. Goodrow) about being assigned more work hours. Ms. Sanchez told Ms. Ramos that additional hours might become available, as another dietary technician, Brandi Licon (Ms. Licon) might be leaving soon. When Ms. Ramos asked why Ms. Licon would leave, Mr. Sanchez said Ms. Licon was pro-union. Ms. Ramos related the conversation to Ms. Licon and both Ms. Ramos and Ms. Licon repeated its substance to other employees. Within a day or two of the conversation, Ms. Ramos and Ms. Licon met with supervisor Dannette Bedford (Ms. Bedford) and reported what Ms. Sanchez had told Ms. Ramos.[25] Ms. Bedford told Ms. Licon that her opinion of the Union had nothing to do with her employment and assured her that her job was not in jeopardy. Ms. Ramos and Ms. Licon then met with department supervisor, Ms. Cavender, and related Ms. Sanchez' comments. Ms. Cavender told Ms. Licon that Ms. Sanchez could talk about the Union because she was their coworker, but she gave Ms. Licon to understand that her job was secure.

As discussed above, the evidence is insufficient to establish that Ms. Sanchez was the Employer's 2(11) supervisor at any relevant time.[26] The evidence does not show that Ms. Sanchez did other than communicate her own speculations in speaking to Ms. Ramos about Ms. Licon's future with the Employer. As soon as the department supervisor, Ms. Cavender, learned of the situation, she reassured Ms. Licon, in the presence of Ms. Ramos,

---

[24] I reject the Petitioner post-hearing argument that the supervisor's encouragement of employees in the meeting to "make sure [they] got over to vote" violated the Board's proscription against anti-union captive-audience speeches in the 42-hour period preceding the election.

[25] Both Ms. Ramos and Ms. Licon testified regarding their conversations with dietary department supervisors. This account is an amalgam of their credible testimony.

[26] I also find, contrary to the Petitioner's contention, that the evidence is insufficient to show Ms. Sanchez was the Employer's agent in speculating about Ms. Licon's job security.

that she need not worry about her employment future. As Ms. Sanchez' comments are not attributable to the Employer and as they were promptly refuted by the Employer, I recommend the Petitioner's Objection 6 be overruled.

6. Objection 8

During the critical period, the Employer enforced a discriminatory practice with regard to the use of company e-mail. Specifically, the Employer allowed employees to send anti-Union propaganda to other employees on its company e-mail system, but prohibited employees from sending pro-Union messages and even neutral questions about the Union, on the e-mail system. At least one employee was reprimanded by a supervisor for discussing the union on company e-mail. Meanwhile…an employee in the non-professional unit repeatedly sent anti-Union e-mails to the entire bargaining unit.

On July 31, employee Elizabeth Garcia (Ms. Garcia) sent an e-mail message to Ms. Boulanger with copies to admitting department supervisors, Alexandra Hazandrea and Lydia Oldfield, emphatically refuting hospital gossip that she was the union instigator in her department and stating that she had not yet made any decision for or against the Union.[27] Shortly thereafter, both supervisors met with Ms. Garcia and told her not to use the company e-mail to send personal messages, adding that the company had been through a previous union election three years before and that "We all have to act like adults, and we need to just let this go by." Ms. Garcia inferred that the supervisors were instructing her not to send emails about the Union on the Employer's e-mail system.

The Employer had a policy restricting personal use of company e-mail. The Petitioner presented some evidence that a number of employees, with the apparent knowledge, if not acquiescence, of supervisors, utilized the hospital e-mail system for occasional non-business messages. There is no evidence, however, that the Employer has knowingly permitted, on a normal, widespread or regular basis, personal use of its e-mail systems, and there is no evidence that the Employer countenanced any e-mail communications of a contentious nature. Ms. Garcia's e-mail signaled the existence of a potential employee dispute, the substance of which was only tangentially related to protected activity and which might reasonably be expected to disrupt work. The supervisors' counsel to Ms. Garcia to act like an adult and let the matter go by in no way interfered with Ms. Garcia's right to engage in union support or nonsupport. The Petitioner has failed to establish that the Employer has discriminatorily applied its e-mail restrictions to union communications. Accordingly, I recommend the Petitioner's Objection 8 be overruled.

7. Objection 11

During the critical period, the Employer repeatedly engaged in surveillance of employees while they spoke with Union organizers.

The facts concerning the Petitioner's utilization of the hospital's smoking area as a place to meet with employees and the organizers' August 13 entry into the hospital is set forth in the discussion of the Employer's Objection 1 above. During the previously described discussions between the Petitioner's and the Employer's representatives regarding the Petitioner's right to

[27] In pertinent part, the email states, "It was brought to my attention that I was the one that brought this union into our dept. I would like to state that I did not have anything [to do] with this…I was very upset when I learned that I was pointed [out] as the person to push for this."

remain in the smoking area, Mr. O'Donnell told the Petitioner's representatives that security guards would be in the area observing them. On August 12, two security officers verified that the Petitioner's representatives had visitor badges and notified them that they would be periodically checking the smoking area.

In the two weeks and a half weeks prior to the election, as the Petitioner's organizers daily met with employees at the smoking area, they observed members of hospital security and/or management walk by at various times. Occasionally, supervisors smoked in the area, and security guards sat briefly at the tables or stood by the door to the nearby security office. There is no evidence supervisory or security personnel presence in the smoking area increased during the union campaign.[28]

Mere supervisory observation of "open, public union activity on or near [an employer's] property does not constitute unlawful surveillance." *Town & Country Supermarkets,* 340 NLRB 1410 (2004); *Fred Wallace & Son,* 331 NLRB 914 (2000); see also *Consolidated Biscuit Co.,* 346 NLRB 1175, 1176 (2006). During the election period, the Petitioner's onsite contact with employees was openly staged in an outdoor smoking area alongside an intra-hospital thoroughfare and adjacent to the Employer's security office. Supervisors and security guards had used the smoking area prior to the union campaign, and there is no evidence the usage increased after the campaign began. In these circumstances, the presence of supervisors and/or security guards in the smoking area cannot be deemed surveillance even if they observed union activity while there.

The Petitioner argues that Mr. O'Donnell's caution to the Petitioner's representatives that security guards would be observing them proves the surveillance. Mr. O'Donnell's statement is susceptible of a lawful interpretation, i.e., that security guards would, as a part of their duties, keep a customary eye on non-employee visitors to the premises, including union representatives. I cannot reasonably infer a more nefarious meaning from the statement. Accordingly, I recommend the Petitioner's Objection 11 be overruled.

8. Objection 12

> During the critical period, respiratory department supervisor Vivian Brooks prohibited respiratory department employees from speaking about the Union in the break room and while on breaks. Brooks reprimanded and threatened employees when she spoke with other employees about the Union in the break room.

[28] Christie McEntyer, employee witness for the Petitioner initially testified that prior to the union campaign, security guards sat or lingered in the smoking area "quite often." When counsel for the Petitioner repeated the question, the witness testified that pre-campaign, the security guards had lingered in the smoking area "not as often" as after the campaign began. When asked, "Did [the security guards] ever sit there [before the campaign began]," the witness answered, "Not really." Under cross-examination, the witness then testified that it was not unusual for the security guards to sit in the smoking area before the union campaign. Upon redirect examination, the witness shifted testimony yet again and stated that pre-campaign the security guards were at the smoking area "not often," but after the campaign commenced, they were there "almost all of the time." The witness's vacillation prevents me from finding, based on her testimony, that the security guards altered their normal practice of visiting the smoking area after the union campaign started.

At all time relevant, Ms. Edwards was supervised by Ms. Brooks. Employee Sherie Higgenbotham (Ms. Higgenbotham) told Ms. Brooks that Ms. Edwards was harassing her about the Petitioner. No evidence was adduced as to what statements or conduct gave rise to the accusation. Ms. Brooks reported it to human resources, and Kelly Abercrombie (Ms. Abercrombie) of human resources met with Ms. Brooks and Ms. Edwards on June 22 in Ms. Brooks' office. Ms. Brooks told Ms. Edwards that she needed to make sure she was not going to make anybody uncomfortable before she talked about the Union. She said some employees had expressed a wish not to speak of the union and felt they were being harassed about it. Ms. Abercrombie told Ms. Edwards she had to be aware of the audience she was speaking to or her statements might be perceived as harassment. Thereafter, Ms. Edwards did not talk about the Union to other employees.

The tenor of Ms. Brooks and Ms. Abercrombie's reproof to Ms. Edwards justifies an inference that Ms. Higgenbotham's complaint to Ms. Brooks was based on Ms. Edwards having merely promoted unionization to her. There is no suggestion the Employer believed Ms. Edwards had engaged in abusive or unduly aggressive behavior. Rather, Ms. Brooks and Ms. Abercrombie apparently proposed to protect the sensibilities of complaining employees who found union advocacy, regardless of its manner of presentation, offensive. Since the Employer's caution to Ms. Edwards inordinately restricted her protected rights, including her right to solicit union support from other employees, it interfered with activities protected by Section 7 and reasonably tended to chill her exercise of those rights. See *University Medical Center,* 335 NLRB 1318, 1320 (2001); *Lafayette Park Hotel,* 326 NLRB 824, 825 FN (1998).

Ms. Brooks and Ms. Abercrombie's meeting with Ms. Edwards took place before the Petitioner filed its petition, and the two supervisors never again discussed the matter with Ms. Edwards. However, their June directive was never withdrawn. Where rules are "likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement." *Id.* The Employer argues that since the Petitioner presented no evidence that Ms. Edwards discussed the incident with other unit employees, it could not have impacted the election. This argument assumes the advocacy of an active union adherent has no influence on how employees cast their ballots in a union election. The assumption is not only unwarranted but fails to give appropriate weight to the role of Section 7 activity in union campaigns. Employees' union activities are legislatively protected precisely because they are likely to shape the outcome of a union campaign. It may be difficult to determine the extent to which silencing a vocal union adherent has affected a union campaign, but it is reasonable to conclude that some impact has been made. Given the closeness of the vote and the continued restraint on Ms. Edwards' protected activity, I find the Employer's broad restriction on talking about the Union, although addressed to only one union adherent, was likely to affect the results of the election. Accordingly, I recommend the Petitioner's Objection 12 be sustained.

9. Objection 13

> During the critical period, the Employer improperly ejected, and threatened to have physically removed, non-employee Union organizers from areas of the Employer's premises to which the public has free and unfettered access.

As detailed in the Employer's Objection 1 above, on August 10, Mr. Bevilacqua and Mr. O'Donnell approached Ms. Somma and two of the Petitioner's organizers in the smoking area and, backed by three security guards, insisted they leave, saying it was a nonpublic area.

Ms. Somma protested and attempted to contact the Employer's attorney by telephone but was unable to reach him. Believing the Employer would physically eject them if they did not comply, Ms. Somma and the other organizers left the area.[29] Three or four employees were in the area at the time

The account of what occurred with regard to the Petitioner's presence at the hospital on succeeding days is also set forth in the Employer's Objection 1 above. Those facts reveal that on two additional occasions during the critical election period—one occurring in the smoking area on August 11 and the other in the hospital hallways on August 13—the Employer requested representatives of the Petitioner to withdraw from the hospital premises. On both of these latter occasions, interactions between the Petitioner and the Employer were conducted civilly and quietly. On August 11, the Petitioner declined to abandon the smoking area without further interference from the Employer, and on August 13 the Petitioner compliantly left the hospital building, but remained on the hospital premises in the smoking area.

Applying the *Cambridge* test to all three incidents, there is no evidence to suggest the August 10, August 11, or August 13 interactions among the Employer's and the Petitioner's representatives had any tendency to interfere with employees' freedom of choice in the election. Although employees who observed the August 10 confrontation in the smoking area could only have concluded that the Employer had compelled the Petitioner's representatives to leave the hospital premises on that occasion, the Petitioner's representatives returned to the smoking area the next day and remained there periodically until the election. From that circumstance, employees must have inferred the Petitioner had asserted and maintained its organizational rights even in the face of strong employer opposition, which could not have worked to the detriment of the Petitioner. The reasonable effect of the later incidents has already been addressed in the analysis of the Employer's Objection 1, and a change from the Employer's to the Petitioner's perspective does not alter my conclusions. Accordingly, I recommend the Petitioner's Objection 13 be overruled.

10. Objection 15

> By the above and other conduct, the Employer and [the Intervenor] have interfered with, coerced, and restrained employees in the exercise of their Section 7 rights and have interfered with their ability to exercise a free and reasoned choice in the election.

Objection 15 is a concluding catch-all allegation. There is no evidence of objectionable conduct that has not previously been addressed. Accordingly, I recommend the Petitioner's Objection 15 be overruled.

RECOMMENDATION

Based on the above, I recommend that Objections 4 and 12 be sustained. In view of the seriousness of the conduct addressed in those objections, which conduct occurred during the critical period and was engaged in by high ranking company officials, and in view of the fact that numerous unit employees were exposed to the objectionable conduct, I conclude the

[29] I reject the Employer's contention that the Petitioner's representatives left the hospital volitionally.

Employer's conduct affected the results of the Board election in Case 31-RC-8649. Accordingly, I recommend that the Board election in Case 31-RC-8649 be set aside and a new election be held.[30]

Further, and in accordance with *Lufkin Rule Co.*, and *Fieldcrest Cannon, Inc.,* 327 NLRB 109 FN 3 (1998), I recommend that the following notice be issued in the Notice of Second Election:

NOTICE TO ALL VOTERS

The election conducted on August 16 and 17, 2007 in the non-professional unit of employees, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this notice of election, all eligible voters should understand that the National labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

Dated, Washington, DC December 18, 2007

Lana H. Parke
Administrative Law Judge

[30] Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the Board in Washington DC within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board in Washington by January 2, 2008. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof upon the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may adopt this Recommended Decision.